

25-44 (Rev. 08/18)

CIVIL COVER SHEET

The 25-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff Delaware

(RECEIPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (For Name, Address, and Telephone Number)

Ernesto A. Roldan, P.C.
4500 West St. New York, NY 10003

DEFENDANTS

County of Residence of First Listed Defendant Washington

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Unknown

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☒ 1 ☐ 2 Incorporated or Principal Place of Business in This State ☐ 4 ☐ 5
- Citizen of Another State ☐ 2 ☐ 3 Incorporated and Principal Place of Business in Another State ☐ 5 ☐ 6
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 6 Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT		TORTS		Check here for: Nature of Suit Code Descriptions	
<input type="checkbox"/> 130 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Drug Related Injuries of Property 21 USC 881	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability		<input type="checkbox"/> 424 Copyright	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud		<input type="checkbox"/> 425 Patent	<input type="checkbox"/> 410 Arbitration
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending		<input type="checkbox"/> 426 Patent - Abandoned New Drug Application	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage		<input type="checkbox"/> 427 Trademark	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability		<input type="checkbox"/> 428 Unfair Labor Standards Act	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability			<input type="checkbox"/> 429 Employee Retirement Income Security Act	<input type="checkbox"/> 470 Rockefeller Influenced and Corrupt Organizations
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury			<input type="checkbox"/> 430 Black Lung (923)	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 165 Contract Product Liability	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice			<input type="checkbox"/> 431 DIWC/DIWW (805(a))	<input type="checkbox"/> 481 Telephone Consumer Protection Act
<input type="checkbox"/> 170 Franchise				<input type="checkbox"/> 432 SLD Title XVI	<input type="checkbox"/> 490 Cable/Sat TV
				<input type="checkbox"/> 433 RSI (409(a))	<input type="checkbox"/> 491 Securities/Commodities Exchange
					<input type="checkbox"/> 492 Other Statutory Actions
					<input type="checkbox"/> 493 Agricultural Acts
					<input type="checkbox"/> 494 Environmental Matters
					<input type="checkbox"/> 495 Freedom of Information Act
					<input type="checkbox"/> 496 Arbitration
					<input type="checkbox"/> 497 Administrative Procedure Act/Review or Appeal of Agency Decision
					<input type="checkbox"/> 498 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (Specify)

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity).

42 U.S.C. 1981 et seq.
Age and Age Discrimination

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint.

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions)

JUDGE N/A

DOCKET NUMBER

DATE

9/9/23

SIGNATURE OF ATTORNEY OF RECORD

Joseph A. Roldan

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

Respectfully submitted:
CASAMENTO & RATASIEWICZ, P.C.

//JOSEPH A. RATASIEWICZ//

BY:

JOSEPH A. RATASIEWICZ, ESQUIRE
Attorney for Plaintiff, I.D. #47453
4 West Front St.
Media, PA 19063
610-891-0180 – (O)
610-891-0557-- (F)
candr@candrlawfirm.com
candrlawfirm@gmail.com

VERIFICATION

I, JOSEPH A. RATASIEWICZ, ESQUIRE , Attorney for Plaintiff in the within matter, aver that the facts set forth in the foregoing answers to interrogatories are true and correct to the best of my knowledge, information and belief and that the statements made herein are subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.

//Joseph A. Ratasiewicz//

Date: 9/9/23

JOSEPH A. RATASIEWICZ, ESQUIRE
Attorney for Plaintiff

RATASIEWICZ, P.C. hereby brings this action against and in support thereof, alleges the following:

PARTIES

1. Plaintiff, Gerald Shay, (hereinafter “Shay”) is an adult individual who currently resides at 12 Spring Street, Media, PA. 19063.
2. Defendant, Pennsylvania Department of Transportation (hereinafter “PennDot”), is an agency of the Commonwealth of Pennsylvania with its home office located at 1101 South Front Street, Harrisburg, PA. 17104.
3. Defendant, Joseph Homitz, is an adult individual who is employed with PennDot as District Manager at the offices located at 225 Lancaster Avenue, Malvern, PA (hereinafter known as “Frazer”).
4. Defendant, Matthew Whitaker, is an adult individual who is employed with PennDot as a Field Operations Manager working out of the 1101 South Front Street, Harrisburg, PA offices of PennDot.
5. Defendant, Commonwealth of Pennsylvania, is the agency that oversees PennDot located 1601 Elmerton, PA 17110.
6. At all times relevant hereto, Plaintiff Shay was working out of the PennDot Frazer center.

JURISDICTION OF THE COURT

7. This action arises under the Federal Statute Title VI of the Civil Rights Act of 1964, the Federal Statute Title VII of the Civil Rights Act of 1967 (Age Discrimination); the Americans with Disabilities Act of 1990.

VENUE

8. Venue is proper in this district under 42 U.S.C. Sect. 2000 et seq because the alleged employment practice of national origin and age discrimination was committed in this district.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

9. Shay timely filed a charge of discrimination against PennDot With the Equal Employment Opportunity Commission (EEOC). Shay files this Complaint Within Ninety (90) days after receiving a notice of Right to Sue from the EEOC. A copy of the Notice of Right to Sue is attached hereto as "Exhibit A".

COUNT I

DISCRIMINATION UNDER TITLE VII

10. On or about October 2017 Plaintiff was hired by the Commonwealth of Pennsylvania as an aid at the Norristown State Hospital and then applied and was accepted as a driver's license examiner assistant at the Malvern Driver License Center in June 2018, a division of the Pennsylvania Department of Transportation (PennDot)

11. Plaintiff was employed full time at the PennDot Frazer center as a license examiner assistant with duties including processing driver license applications and customer service to applicants.

12. On or about October 22, 2019 Plaintiff filed a grievance regarding improper denial of over-time shortage of pay; which grievance was never resolved. As a result, Plaintiff was never paid his due overtime pay.

13. After filing said grievance in October 2019, a pattern of harassment/retaliation began against Plaintiff by PennDot and Homitz which consisted of: verbal abuse, comments regarding age, false accusations of violations of policies, improper disciplines and denial of promotions, humiliation in front of co-workers by Homitz on many occasions, discriminating actions based on Plaintiff's disability and his use of Family Medical Leave, which harassment/retaliation was ongoing through Plaintiff's termination of employment September 2, 2022.

AGE DISCRIMINATION

14. At the time Plaintiff was first employed at the PennDot Frazer center he was 59 ears old and thus in a protected class. When the harassment began in October of 2019, Plaintiff was 61 years of age.

15. During the periods of harassment (October 2019 thru August of 2022), numerous public comments were made by Homitz regarding

Plaintiff's age including but not limited to: "I know you didn't grow up with computers like these younger people"; "You're too slow"; "Maybe your hearing is not that good anymore"; "you go to the bathroom too much"; all made in the presence of others which was humiliating and meant to to embarrass Plaintiff about his age and was calculated by defendant Homitz.

16. On numerous occasions while at PennDot, plaintiff applied for promotions and was by-passed for younger employees even though plaintiff had seniority and more experience.

17. Plaintiff did notify PennDot of this age related actions of discrimination in EEO Complaint alerting defendant to the discrimination to which PennDot failed to take any action to correct.

18. Defendants, Homitz and Whitaker, both deliberately overlooked Plaintiff for several promotions based on their discriminatory actions towards Plaintiff.

19. Said discriminatory actions by defendants have harmed Plaintiff in lost wages, lost promotions and emotional distress resulting in medical conditions requiring treatment. Such conduct by defendants is in direct violation of Age Discrimination of Employment Act of 1967, as codified, 29 U.S.C. sections 621 - 634.

ADA DISCRIMINATION

20. On or about March 2021, plaintiff was diagnosed with a heart condition, high blood pressure, depression, stress and anxiety which required certain accommodations after a 30 day removal from work to assist in recovery during which plaintiff was out on the Family Medical Leave Act (FMLA).

21. Said diagnoses were sent to the ADA Department for the Commonwealth of Pennsylvania along with the accommodations.

22. The FMLA department of the Commonwealth was alerted to these accommodations and then informed the plaintiff that he could return to work as PennDot would not make all such accommodations.

22. Plaintiff was informed by the ADA Department that Homitz and Ronald Scott Johnson (Regional Manager) refused to allow plaintiff to have such accommodations. Ronald Beatty, Jr. (Director of Bureau of Licensing) over-rode Homitz and Johnson and permitted the accommodations allowing the plaintiff to return to work.

23. Said accommodations included allowing extra time to review and check work performed by plaintiff and required a union representative at all meetings, which Homitz ignored and also held several meetings with plaintiff without a union rep thus creating a more stressful environment.

24. Regardless of these required accommodations, plaintiff was still held to the same standard as if he didn't require accommodations and was thus written up by Homitz on numerous occasions as "unsatisfactory" in his work performance without regard to those accommodations. These actions created more stress and required continued treatment resulting in more FMLA absences.

25. In February, 2022, Homitz called a meeting with Plaintiff after sending an email requiring Plaintiff to respond to a customer issue.

26. Upon Plaintiff's arrival, Homitz screams at plaintiff to "get in the conference room now" in front of staff and customers at which plaintiff immediately becomes stressed to the point he became light headed with blurred vision, plaintiff went outside to get air, came back into an office feeling faint where Homitz was present.

27. Based on the stress level created by Homitz, Plaintiff had to leave and go home as he was extremely ill.

28. On the next work day, approximately February 3, 2022 in the morning Plaintiff returned to his job but was still not well, reported his ill feeling to Josh Sheerer, but needed several breaks throughout the day.

29. On the next day, approximately February 4, 2022, plaintiff called out sick and had to go back on FMLA. Plaintiff was without pay for several months as a result of having to take this FMLA leave.

30. In or about July 2022, plaintiff was informed that he must return to work or his position would be terminated.

31. On July 30, 2022 plaintiff returned to PennDot and worked the full day.

32. On August 1, 2022, plaintiff reported for work and plaintiff was directed to a conference room wherein plaintiff was informed he was suspended without pay for no cause nor given a reason with suspension lasting until further notice.

33. On September 2, 2022, plaintiff's employment with PennDot was officially terminated by their letter which they indicated was sent out to plaintiff. Said termination letter referenced prior actions by plaintiff which defendant's claim form the basis of said termination.

34. Said reasons for such termination were all a smoke screen for the discriminatory acts of defendants towards Plaintiff's disabilities.

35. Defendant's intentionally and with wanton reckless disregard terminated plaintiff's employment as defendants wanted to rid themselves of

plaintiff due to his disabilities and age as well as his documented medical diagnosis.

36. Defendant's conduct is in direct violation of the Americans with Disabilities Act of 1990, as codified, 42 U.S.C. sections 12112 - 12117.

37. Defendants retaliated against plaintiff for taking FMLA for his documented disabilities and their having to make accommodations which they failed to adhere to.

38. Defendants purposely violated the FMLA and ADA when they deliberately forced plaintiff to return to work so that they could fire him.³⁹. Said actions by defendants were in retaliation for the medical leave and accommodations required for plaintiff to maintain employment which defendants did not want to accommodate, as well as the facts surrounding plaintiff's challenge of the non-payment of overtime pay which plaintiff continued to challenge to the date of his termination.

DAMAGES

40. Plaintiff seeks compensation for lost passed wages, forward wages, lost medical coverage, lost pension, emotional distress and mental anguish in the form of sleeplessness, nervousness, and stress that he felt as a result of the harassment he experienced by Defendants, and punitive damages.

ATTORNEY'S FEES

41. Plaintiff is entitled to be awarded attorney fees and costs as allowed by law under Title VII, 42 U.S.C. Sect.2000e-5(k).

WHEREFORE, for all the above reasons, Shay asks for judgment against the defendants for the following:

- (a) Loss of income;
- (b) Loss of bonuses, incentives and severance pay;
- (c) Mental anguish and emotional distress in form of sleeplessness, nervousness, and stress that he felt as a result of the harassment he experienced by Defendants;
- (d) Compensation for humiliation and mental anguish;
- (e) Treble and/or punitive damages;
- (f) Reasonable attorney's fees. Costs of filing suit; and
- (g) Any and all other relief the Court deems proper.

Respectfully submitted:
CASAMENTO & RATASIEWICZ, P.C.

//Joseph A. Ratasiewicz//

BY:

JOSEPH A. RATASIEWICZ, ESQ.
Attorney I.D. #47453
4 West Front St.
Media, PA 19063
610-891-0180 – Phone

610-891-0557

candrlawfirm@gmail.com

candr@candrlawfirm.com

Exhibit "A"



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Philadelphia District Office
801 Market Street, Suite 1000
Philadelphia, PA 19107-3126
Email: PDOcontact@eeoc.gov
Website: eeoc.gov

DETERMINATION AND NOTICE OF RIGHTS

(This Notice replaces EEOC FORMS 161 & 161-A)

To: Mr. Gerald Shay
12 Spring Street
MEDIA, PA 19063

Re: Mr. Gerald Shay v. penndot
EEOC Charge Number: 530-2023-00299

EEOC Representative and phone: Philadelphia Legal Unit, (267) 589-9707

DETERMINATION OF CHARGE

The EEOC issues the following determination: The EEOC will not proceed further with its investigation and makes no determination about whether further investigation would establish violations of the statute. This does not mean the claims have no merit. This determination does not certify that the respondent is in compliance with the statutes. The EEOC makes no finding as to the merits of any other issues that might be construed as having been raised by this charge.

NOTICE OF YOUR RIGHT TO SUE

This is official notice from the EEOC of the dismissal of your charge and of your right to sue. If you choose to file a lawsuit against the respondent(s) on this charge under federal law in federal or state court, **your lawsuit must be filed WITHIN 90 DAYS of your receipt of this notice.** Receipt generally occurs on the date that you (or your representative) view this document. You should keep a record of the date you received this notice. Your right to sue based on this charge will be lost if you do not file a lawsuit in court within 90 days. (The time limit for filing a lawsuit based on a claim under state law may be different.)

Please retain this notice for your records.

On Behalf of the Commission:

Digitally Signed By: Karen McDonough
Mon Jun 12 00:00:00 EDT 2023

Karen McDonough
Deputy District Director